



AT&T South Carolina
1600 Williams Street
Suite 5200
Columbia, SC 29201

T: 803.401-2900
F: 803.254.1731
patrick.turner.1@att.com
www.att.com

July 28, 2009

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region
InterLATA Services Pursuant to Section 271 of the Telecommunications
Act of 1996
Docket No. 2001-209-C

Dear Mr. Terreni:

Item No. 6 on the Commission's Utilities Agenda for this week is a discussion of the approval of AT&T South Carolina's Petition for Waiver of SEEM Plan Fine and Affidavit.

Attached for the Commission's consideration is a recent Order for the North Carolina Utilities Commission that grants the companion waiver Petition in that proceeding despite the fact that the North Carolina Public Staff recommended a contrary result.

Unlike the North Carolina Public Staff, the Office of Regulatory staff "does not oppose [AT&T South Carolina's] request for a waiver of fines incurred from the SEEM Plan under the specific circumstances arising in this case." See ORS's Letter of June 30, 2009 filed in Docket No. 2001-209-C. Nor has any other person or entity opposed AT&T South Carolina's Petition that is pending before this Commission.

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AT&T South Carolina, therefore, respectfully requests that the Commission reach the same result as the North Carolina Commission reached and approve AT&T South Carolina's Petition during tomorrow's agenda session.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive style with a large, stylized "P" and "T".

Patrick W. Turner

PWT/nml
Attachment

DOCKET NO. P-100, SUB 133k

In the Matter of
Generic Docket to Address Performance
Measurements and Enforcement Mechanisms

) ORDER GRANTING AT&T'S
) PETITION FOR WAIVER

AT&T noted that, absent the relief it is seeking in its Petition, the reposting of the corrected data would result in AT&T paying a fine of approximately \$35,200 in North Carolina. AT&T asserted that, under the circumstances (which include no harm to competing local providers (CLPs) and self-reporting by AT&T), a fine of this magnitude is unduly punitive, excessive, and inconsistent with the purposes of the reposting obligation. AT&T further noted that all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all CLPs have received the appropriate payments under the SEEM Plan.

On June 22, 2009, the Public Staff filed its comments on AT&T's Petition. The Public Staff noted that the initial SEEM plan was adopted by the Commission in its

¹ Section 2.6 of AT&T's SEEM Plan states, "BellSouth shall pay penalties to the Commission, in the aggregate, for all reposted SQM and SEEM reports in the amount of \$400 per day. The circumstances which may necessitate a reposting of SQM reports are detailed in Appendix F, Reposting of Performance Data and Recalculation of SEEM Payments. Such payments shall be made to the Commission or its designee within fifteen (15) calendar days of the final publication date of the report or the report revision date."

May 22, 2002, *Order Concerning Performance Measurements and Enforcement Mechanisms*. The Public Staff stated that, in that *Order*, the Commission found that a penalty is an appropriate incentive to encourage AT&T to provide complete and accurate reports that allow the Commission and CLPs to monitor the level of service provided by AT&T. The Public Staff noted that the penalties adopted in that plan were \$1,000 per day for incorrect SQM, SEEM or raw data reports, up to \$3,000 per day, irrespective of their effect on other SEEM payments. The Public Staff maintained that on October 24, 2005, the Commission approved revised SEEM and SQM plans proposed by a coalition of CLPs and AT&T. The Public Staff stated that the revised SEEM plan, among other things, reduced AT&T's penalty obligations to \$400 per day for all reposted SQM and SEEM reports.

The Public Staff further noted that the policy under which AT&T is required to repost SQM data is set forth in Appendix D of the SQM plan and Appendix F of the SEEM plan. The Public Staff stated that the reposting policy sets the threshold at which AT&T must post corrected reports. The Public Staff asserted that this prevents AT&T from being required to repost data and incur penalties due to insignificant changes in the reporting results. The Public Staff maintained that, in this case, the posting error met the threshold described in the policy, thereby triggering the reposting requirement.

The Public Staff asserted that AT&T has failed to show that the penalty amount is unduly punitive or excessive or inconsistent with the purpose of the reposting obligation. The Public Staff noted that, indeed, AT&T paid similar penalties in 2008 for reposting SQM data as prescribed by the SEEM plan. The Public Staff maintained that the penalty payment due in this instance should give AT&T sufficient incentive to report accurate SQM data. Therefore, the Public Staff recommended that the Commission deny AT&T's request for a waiver.

On July 1, 2009, AT&T filed its reply comments. AT&T argued that the instant situation is a unique and first-time occurrence. AT&T maintained that the purpose of the reposting obligation is to encourage AT&T to correctly report data relied upon to calculate SEEM remedy payments. AT&T noted that, unlike previous reposting incidences of SQM performance reports that required recalculation of SEEM remedies to the CLPs and the Commission, the instant reposting had no such impact, because performance data for remedy calculations was properly processed and resulted in on-time and accurate remedy payments. AT&T asserted that, in other words, SEEM remedy obligations and SEEM liability calculations were reflective of actual operational performance; CLPs experienced no harm from this data reporting issue.

AT&T noted that, for purposes of the SQM performance reports for the P-11 Service Order Accuracy measurement, all Local Service Requests (LSRs) submitted by CLPs for which the P-11 metric applies were reviewed for accuracy to the completed service order after provisioning. AT&T stated that the metric report has two levels of disaggregation: Resale and UNE. AT&T maintained that the issue here is that some of the transactions (and only for some Local Number Portability (LNP) transactions) were reported in the Resale disaggregation when they should have been reported in the UNE

disaggregation. AT&T asserted that, had the Service Order Accuracy report been based on total performance instead of split between Resale and UNE, the results would not have changed. AT&T argued that, therefore, the CLPs had complete information to understand and assess their performance, and this error in SQM performance reporting did not by any means impair the CLPs' ability to compete.

AT&T stated that the requirement for the reposting was triggered by item 3 set forth in Appendix D of the SQM Plan² and Appendix F of the SEEM Plan³. AT&T noted that, specifically, for SQM sub-metrics calculations with benchmarks, reposting is required whenever there is a $\geq 2\%$ decline in AT&T's performance at the sub-metric level. AT&T maintained that a recently-completed data analysis, which AT&T attached to its reply comments as Exhibit A, for the three performance data months subject to the reposting fine (December, January, and February), plus the additional data month of March, reflects that only a slight difference between the resale results for two months (December: 2.15%; January: 2.29%) triggered the reposting obligation. AT&T noted that for both the months of February and March, the difference was less than 2% and, therefore, no reposting was necessary. AT&T argued that this slight difference should not trigger a fine in a situation where remedies were accurately and timely processed.

AT&T maintained that the three performance data months subject to the reposting fine are December, January, and February. AT&T noted that the respective SEEM remedy payments for these data months were processed in February, March, and April. AT&T stated that it paid the Commission Tier 2 remedies totaling \$37,200 for those performance months for the Service Order Accuracy metric. AT&T argued that it is unduly punitive to now require a reposting fine of \$35,200, which almost equals the Tier 2 remedies paid that were processed in a timely manner using correct performance data.

AT&T asserted that it has acted in good faith by identifying and self-reporting this error in the SQM performance reports for Service Order Accuracy and promptly initiating corrective action, including notification to the industry as required by Appendix F (PMAP Data Notification Process) of the SQM Plan. AT&T maintained that, under these circumstances, the payment of the \$400 per day reposting fine serves as a disincentive for AT&T to be proactive in the spirit of continuous improvement to identify any potential data processing errors.

² Item 3 in Appendix D of AT&T's SQM Plan states, "SQM Performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a $\geq 2\%$ decline in BellSouth's performance at the sub-metric level."

³ Item 3 in Appendix F of AT&T's SEEM Plan states, "SQM Performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a $\geq 2\%$ decline in BellSouth's performance at the sub-metric level."

AT&T stated that, for all of the reasons set forth in its Petition and reply comments, the Commission should grant its waiver request.

WHEREUPON, the Commission now reaches the following

CONCLUSIONS

The Commission concludes and determines that the SQM and SEEM plans in place for AT&T are reasonable and appropriate. Those plans call for AT&T to pay a reposting penalty to the Commission of \$35,200 for data errors made in December 2008 and January 2009. Reposting is required whenever there is a $\geq 2\%$ decline in AT&T's performance at the sub-metric level. Based on Exhibit A attached to AT&T's reply comments, the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for December 2008 was -2.15% or 0.15% higher than the 2% threshold, and the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for January 2009 was -2.29% or 0.29% higher than the 2% threshold.

The Commission concludes and determines that, in this unique and specific circumstance, it is appropriate to grant AT&T's request for a waiver of the reposting penalty. Because the percentages which triggered the reposting and reposting penalty are so close to the 2% threshold and because all SEEM penalty payments were calculated correctly and paid on-time, the Commission is satisfied that this specific instant case is deserving of a waiver. The Commission stresses that this is a decision based on the facts of AT&T's instant request and that the Commission is granting a waiver to a reposting penalty that is technically and legitimately due under AT&T's SEEM plan. The Commission does not intend for this decision to be precedent-setting and will consider any future waiver petitions of this nature on a case-by-case basis.

IT IS, THEREFORE, ORDERED that AT&T's June 9, 2009 Petition for Waiver is hereby granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of July, 2009.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Letter dated July 28, 2009 in Docket No. 2001-209-C to be served upon the following on July 28, 2009:

Florence P. Belser, Esquire
General Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
(Electronic Mail)

F. David Butler, Esquire
Senior Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Joseph Melchers
Chief Counsel
S.C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Jocelyn G. Boyd, Esquire
Deputy Clerk
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Russell B. Shetterly, Esquire
P. O. Box 8207
Columbia, South Carolina 29202
(Knology of Charleston and Knology of
South Carolina, Inc.)
(Electronic Mail)

John F. Beach, Esquire
John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(Resort Hospitality Services, Inc., NuVox
Communications, Inc., AIN Momentum Business
Solutions, Inc. and CompSouth)
(Electronic Mail)

Marsha A. Ward, Esquire
MCI WorldCom, Inc.
Law and Public Policy
6 Concourse Parkway, Suite 3200
Atlanta, Georgia 30328
(MCI)
(Electronic Mail)

Frank R. Ellerbe, Esquire
Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, South Carolina 29202
(SCCTA)
(Electronic Mail)

Genevieve Morelli
Kelley, Drye & Warren, LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(KMC Telecom III, Inc.)
(Electronic Mail)

William R. Atkinson
Director – State Regulatory Affairs
233 Peachtree Street, N.E.
Suite 2200
Atlanta, GA 30303
(Sprint/Nextel)
(Electronic Mail)

Cheryl Sweitzer
EMBARQ
14111 Capital Boulevard
Mailstop NCWKFR0303-3192
Wake Forest, North Carolina 27587
(Sprint/United Telephone)
(Electronic Mail)

Jack Derrick
EMBARQ
14111 Capital Boulevard
Mailstop NCWKFR0313-3192
Wake Forest, North Carolina 27587
(Sprint/United Telephone)
(Electronic Mail)

M. Zel Gilbert, Esquire
Director-External Affairs - Sprint
1122 Lady Street, Suite 1050
Columbia, South Carolina 29201
(Sprint/United Telephone Company)
(Electronic Mail)

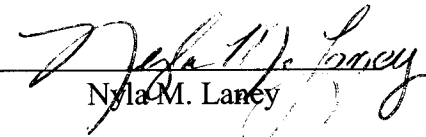
Bonnie D. Shealy, Esquire
Robinson McFadden & Moore, P.C.
1901 Main Street, Suite 1200
P. O. Box 944
Columbia, South Carolina 29202
(US LEC)
(Electronic Mail)

Andrew O. Isar
Director – State Affairs
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335
(ASCENT)
(Electronic Mail)

Anthony Mastando
ITC^DeltaCom/BTI
7037 Old Madison Pike
Suite 400
Huntsville, Alabama 35806
(Electronic Mail)

Tami Azorsky, Esquire
McKenna & Cuneo, LLP
1900 K Street, N.W.
Washington, DC 20006
(AT&T)
(Electronic Mail)

Robert E. Tyson, Esquire
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29211
(CompSouth)
(Electronic Mail)



Nyla M. Laney